

1 HONORABLE RONALD B. LEIGHTON  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 KENNETH CHARLES LASSITER and  
11 ALPHA DORIS D. LASSITER,

12 Plaintiff,

13 v.

14 CITY OF BREMERTON, MATTHEW  
15 THURING, JOHN VANSANTFORD,  
RONALD FORBES, BREMERTON  
POLICE CHIEF, and Does 1-10

Defendants.

Case No. C05-5320RBL  
ORDER.

16  
17 THIS MATTER comes before the Court on Defendants' Motion for Costs [Dkt. #460] and for  
18 Attorney's Fees pursuant to 42 U.S.C. § 1988 [Dkt. #459]. The Court has considered the motions, affidavits  
19 in support, plaintiff's opposition thereto, and the entirety of the records and file herein. For the reasons stated,  
20 defendants' motions are **DENIED**.

21 In 2003 Mr. and Mrs. Lassiter filed a complaint against the City of Bremerton, Matthew Thuring, John  
22 Vansantford, Ronald Forbes, Bremerton Police Chief, and Does 1-10 alleging false arrest, false imprisonment,  
23 intentional infliction of emotional distress, violation of Civil Rights Act of 1964, 42 U.S.C. § 1983, physical  
24 injury and severe emotional distress. In September of 2008 an eight day trial took place, which concluded with  
25 a jury verdict in favor of defendants on all claims.

26 Defendants, City of Bremerton and officers Thuring and Vansantford, now seeks reasonable costs and  
27 attorney's fees under 42 U.S.C. § 1988.  
28

1 The Statute provides:

2 In any action or proceeding to enforce a provision of [42 U.S.C. §§ 1981-85...], the  
 3 court, in its discretion, may allow the prevailing party, other then the United States,  
 a reasonable attorney's fee as part of the costs[ ]...

4 Attorney's fees are available to a prevailing defendant under §1988 if this Court finds "that the plaintiff's  
 5 action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith."

6 *Hughes v. Rowe*, 449 U.S. 5, 14 (1980); quoting *Christiansburg Garmet Co. v. EEOC*, 434 U.S. 412, 421  
 7 (1978)(Title VII case); see also *Patton v. County of Kings*, 857 F.2d 1379, 1381 (9th Cir. 1988). As a  
 8 protection against plaintiff's being routinely assessed their opponents' fees, the Court ruled "[t]he plaintiff's  
 9 action must be meritless in the sense that it is groundless or without foundation. The fact that a plaintiff may  
 10 ultimately lose his case is not in itself a sufficient justification for the assessment of fees." *Hughes v. Rowe*,  
 11 449 U.S., at 15. Fed. R. Civ. Pro 54(d)(1) provides: "costs other than attorney's fees shall be allowed as a  
 12 matter of course to the prevailing party unless the court otherwise directs." 42 U.S.C § 1988 and Fed. R  
 13 Civ P. 54(d)(1) by their express terms create a presumption in favor of awarding costs to a prevailing party,  
 14 but vests in the district court discretion to refuse to award costs. See *National Info Servs., Inc. v. TRW, Inc.*,  
 15 51 F.3d 1470, 1471 (9th Cir.1995).

16 The Court recognizes that its discretion is not unlimited. However, after taking into account the  
 17 limited financial means of the Lassiters,<sup>1</sup> the economic disparities between the Lassiters and the City of  
 18 Bremerton<sup>2</sup> the substantial importance of the issue to the public, the chilling effect granting costs would  
 19 have on future plaintiffs, and the fact that the case was not totally without merit, the Court has determined  
 20

21     ///

22     ///

23     ///

24     ///

25     ///

---

26     27     <sup>1</sup> Mr. Lassiter is permanently disabled, and Mrs. Lassiter works at Wal-Mart.  
 28

29     <sup>2</sup> The City of Bremerton has an annual budget many times greater then the Lassiter's household income.

1 that granting cost or fees would not be appropriate. Therefore, Defendants' Motion for Costs [Dkt. #460]  
2 and Defendants Motion for Fees [Dkt. #459] are **DENIED**.

3 IT IS SO ORDERED.

4 Dated this 30<sup>th</sup> day of October 2007.  
5

6   
7 RONALD B. LEIGHTON  
8 UNITED STATES DISTRICT JUDGE

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28